

Shanks



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Applied Science Associates, Inc.

File: B-234467

Date: June 20, 1989

DIGEST

1. Contracting agency's action in removing a member from the technical evaluation team was reasonable where the agency considered the evaluator to have a potential conflict of interest in that his major graduate degree advisor is an executive of the protesting firm.

2. Protest that agency's evaluation of proposals on the bases of offerors' knowledge of launcher tow tank testing experience and the proximity of the tow tank testing equipment to the agency's facility was "inappropriate" because it afforded a competing offeror a competitive advantage is denied since the evaluation criteria stated in the request for proposals clearly provided for these factors to be considered in the evaluation.

DECISION

Applied Science Associates, Inc. (ASA), protests the award of a contract to Tracor Hydronautics, Inc., of Laurel, Maryland, under request for proposals (RFP) No. N66604-88-R-3050, issued by the Naval Underwater Systems Center (NUSC), Newport, Rhode Island. The RFP was issued for engineering services for analysis, testing, model building, and facility development in support of submarine weapon launcher and handling systems over a period of 42 months under an indefinite delivery, indefinite quantity cost-plus-fixed-fee contract. ASA essentially contends that the Navy conducted the procurement unfairly and evaluated its proposal improperly.

We deny the protest.

The RFP stated that award would be made to the responsible offeror whose conforming offer is determined to be the most advantageous to the government considering the following factors listed in descending order of importance:

045794/138953

(1) Personnel; (2) Corporate Past Experience and Performance; (3) Facilities; (4) Management and Technical Approach; and (5) Cost. Two firms--the awardee and the protester--of 72 firms solicited submitted proposals in response to the RFP. After discussions and the evaluation of best and final offers (BAFOs), award was made to Tracor on the basis of its higher rated technical proposal and lower evaluated cost.

The protester first alleges that the Navy's removal of one of the evaluation team members on the basis of an apparent conflict of interest was improper and unfair because another similarly situated member was allowed to remain on the team. The member was removed because an executive of ASA was serving as that evaluation member's major advisor for a graduate degree. ASA maintains that the same ASA executive was also serving as major graduate degree advisor to a second evaluation team member at the time of evaluation of proposals who was not removed. The protester contends the agency actually removed the member because his "recommendation [for award] was counter to what certain [other] members of the team desired as the [award] outcome."

The Navy responds that the two evaluation team members to whom the protester refers were not similarly situated as alleged, and that a potential conflict of interest existed with respect to the member who was removed because during the time of evaluation of proposals, the ASA executive was his graduate adviser and, therefore, could influence when and whether he completed a major element of his graduate degree requirements. With respect to the other evaluation team member, although it is true that the ASA executive also served as his major adviser when he was pursuing a graduate degree, that evaluator completed his degree in 1987--well before the evaluation team evaluated proposals under the subject solicitation. Thus, he was not "dependent" upon the ASA executive as was the evaluator who was removed.

While ASA alleges there was no "real" evidence of impropriety justifying removal of the evaluator, the procuring agency bears the responsibility for balancing the competing interests of the procurement process between preventing possible bias and awarding a contract that is most advantageous to the government. See NAHB Research Foundation, Inc., B-219344, Aug. 29, 1985, 85-2 CPD ¶ 248. We will not disturb the agency's determination in such a matter unless it is shown to be unreasonable. Id. In view of the potential conflict of interest that existed with respect to the individual who was removed from the evaluation team, we believe the agency acted reasonably in removing that member.

See Development Assocs., Inc., 56 Comp. Gen. 580 (1977), 77-1 CPD ¶ 310; National Council of Teachers of English, B-230669, July 5, 1988, 88-2 CPD ¶ 6.

ASA next alleges that the Navy improperly attempted to require ASA to propose another subcontractor instead of its proposed model testing and evaluation subcontractor, Arctec, based on a negative financial status recommendation on Arctec by the Defense Contract Audit Agency (DCAA). ASA maintains this was an attempt to effectively limit the competition to a sole source, since there are only two commercial facilities in the United States capable of meeting the basic model testing and evaluation requirements specified in the RFP, and use of the other facility had been proposed by Tracor. However, the record shows that ASA and Arctec persuaded the Navy during discussions that Arctec was financially secure and that the agency accepted ASA's use of Arctec as its subcontractor. Thus, as the agency states, ASA was not prejudiced by the agency's earlier request that it use another subcontractor.

The protester next contends that the agency, in evaluating proposals, "emphasized technical evaluation criteria" essentially for the purpose of accomplishing a sole-source award to Tracor. The protester states that during its debriefing, it was "indicated" that the major weaknesses in ASA's proposal was its lack of intimate knowledge of launcher tow tank (large scale model) testing and the location of Arctec's tow tank (California). The protester expresses the view that this evaluation was inappropriate because Tracor is the only firm that is likely to meet the testing experience requirements, since it is the only firm to ever perform large scale model testing on launcher systems, and because, as the offeror having the closer tow tank facility (Maryland), Tracor would always receive the highest evaluation credit. Thus, ASA maintains, the "structuring of the RFP and [its] evaluation process effectively led to a sole source procurement" since no commercial facility other than Tracor could effectively compete.

The "Technical Proposal Requirements" section of the RFP stated, under "Corporate Experience and Performance":

" . . . Work pertaining to the [statement of work (SOW), which required tow-basin testing of the required weapons systems] that has been done in support of submarine launcher missile systems should be emphasized The offeror must

describe corporate experience which demonstrates knowledge and capability to perform the tasks described in the [SOW]."

Under the "Facility Resources Requirements" section of the SOW, concerning location, the RFP stated:

"The physical location of the contractor's facility shall weigh in the evaluation of the contractor's proposal [T]he location should permit commuting and meeting or tests to be conducted the same day"

It is, thus, apparent from the RFP that testing experience and facility location would be considered in the evaluation. Our review does not indicate that the Navy inappropriately evaluated these factors. To the extent that ASA's protest concerns the "structuring" and evaluation scheme of the RFP, it is untimely since protests of apparent alleged solicitation defects must be protested prior to the closing date for receipt of proposals, and ASA did not protest until after award. 4 C.F.R. § 21.2(a)(2) (1988); see Schuelke & Assocs., Inc., B-231389, Sept. 2, 1988, 88-2 CPD ¶ 210.

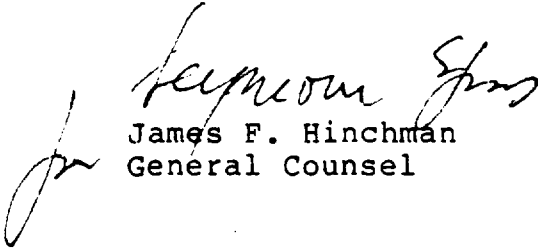
ASA next challenges the Navy's cost evaluation of its proposal. Specifically, the protester maintains that the Navy artificially inflated the government's travel cost related to the use of Arctec's tow tank facility and ignored the general and administrative (G&A) overhead rates which ASA proposed in its BAFO. The Navy responds that government travel costs were not added to ASA's cost proposal as is contended. The Navy explains that although the costs were calculated, this did not influence the award selection. The agency further explains that because DCAA had not approved ASA's revised proposed G&A rates, DCAA advised it to use ASA's most recently approved G&A rate, as opposed to that proposed in its BAFO. The protester challenges the necessity of the agency's consultation with DCAA regarding the approval of its G&A rate.

The agency states, and the protester does not deny, that even if the agency had used the G&A rates and government travel rates most favorable to ASA, its proposal would still have cost the government \$39,030 more than Tracor's proposal. Since Tracor's proposal was rated technically superior to ASA's proposal and had a lower cost, even if ASA's contentions about the cost evaluation are true, Tracor would still be in line for award.

ASA next alleges that the Navy failed to notify it promptly of the date of award of the contract, as a result of which ASA was "almost" denied the right to file a timely protest of the award with us. The Navy responds that although the notice of award which it mailed to ASA "did not provide the date of contract award," the protester was not prejudiced since its protest was timely filed. The record shows that ASA learned of the award and protested it within 7 calendar days thereof. Thus, ASA's protest that it "could have been" prejudiced, but for its own efforts to ascertain the information, provides no basis for protest. See Fayetteville Group Practice, Inc., B-226422.5, May 16, 1988, 88-1 CPD ¶ 456 at 4.

Finally, the protester requests that our Office decide this protest in disregard of the Navy's administrative report because ASA received the report 3 days after the date it was due. However, we have no reason to do so since the Navy filed its report with our Office on the date it was due, and ASA had 10 days after it received the report to submit its comments as provided by our Bid Protest Regulations, 4 C.F.R. § 21.3(k).

The protest is denied.


James F. Hinchman
General Counsel